

REMARKS

Applicants initially note the recent history of this application:

- A Final Office Action issued on August 16, 2005;
- A Request for Continued Examination (“RCE”) under 37 C.F.R. § 1.114, a first Preliminary Amendment, and a Petition for Suspension of Action (37 C.F.R. § 1.103) were subsequently filed on January 17, 2006;
- Thereafter, the USPTO granted the Petition for Suspension of Action on January 24, 2006;
- Applicants then filed an Information Disclosure Statement (“IDS”) on February 22, 2006; and
- This present Preliminary Amendment now follows.

Thus, the instant Preliminary Amendment amends the claims with regard to the January 17, 2006 set of claims. Also, the Suspension of Action ends on April 17, 2006.

Applicants respectfully request the Examiner to reconsider the present application in view of the claim amendments and arguments presented in the first Preliminary Amendment of January 17, 2006 as well as the current preliminary amendments to the claims and accompanying remarks.

Status of Claims

In the present Reply, claim 1 has been amended. Thus, claims 1-18 are pending in the present application. No new matter has been added by way of the amendment to claim 1, since

this amendment actually deletes subject matter and has support in the originally filed claim.

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, along with the remarks of the first Preliminary Amendment of January 17, 2006, Applicants respectfully request the Examiner to withdraw all rejections and allow the currently pending claims.

Issues Under 35 U.S.C. § 112, First Paragraph

Claims 1-18 stand rejected under 35 U.S.C. § 112, first paragraph, for asserted lack of written description (see paragraphs 1-2 of the outstanding Office Action). As stated in the January 17 Preliminary Amendment, this rejection is rendered moot since claim 1 recites that the polymer is in the form of latex and is in the image-forming layer. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Issues Under 35 U.S.C. § 102(b)/§ 103(a)

Claims 1-18 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over the combination of Fukui *et al.* (Public. No. 2002/0102502; hereinafter "Fukui *et al.* '502") (see paragraph 5 of the outstanding Final Office Action).

Also, claims 1-18 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over EP 1 096310 (hereinafter "EP '310") (see paragraph 6 of the Office Action).

Applicants respectfully traverse all rejections.

The Examiner's particular comments to Applicants' previous arguments can be seen in paragraph 8 of the Office Action. In forming the instant rejections, however, the Examiner has admitted that Fukui *et al.* '502 and EP '310 do not disclose that at least one of R⁰¹ and R⁰² in formula (M) is different from a hydrogen atom. Still, in order to cure the deficiency of either Fukui *et al.* '502 or EP '310, the Examiner has relied on the disclosure of *The Hackh's Chemical Dictionary* (4th Ed.) (page 116). As stated in paragraph 8 of the Final Office Action, the Examiner states: "The butadiene known in art encompasses the scope of the isoprene such as defined in *The Hackh's Chemical Dictionary*, Fourth Edition, and the percentage of the isoprene monomer claimed in the present claimed invention encompasses the scope of the butadiene monomer disclosed in the applied prior art of record." (see page 6 of the Final Office Action).

Generally, in response to the above rejections, Applicants submit that the combination/modification of either Fukui *et al.* '502 or EP '310, and the reference to *The Hackh's Chemical Dictionary* (4th Ed.), is improper. In particular, Applicants respectfully disagree as to how "butadiene" is actually defined in *The Hackh's Chemical Dictionary* (4th Ed.). Further, each of the cited references fails to disclose the photothermographic material of the instantly claimed invention.

Definition of “butadiene” in *Hackh’s Chemical Dictionary*

Applicants respectfully submit that the Examiner’s dependence on *The Hackh’s Chemical Dictionary* (4th Ed.) reference is misplaced. *Hackh’s Chemical Dictionary* merely defines “butadiene” on page 116 as follows:

butadiene-* Bivinyll. **bromo**-* Bromoprene. **chloro**-* chloroprene. **methyl**-* Isoprene. **b. dicarboxylic acid**. Muconic acid.

One of skill in the art understands that this definition of “butadiene” merely states that budadiene corresponds to bivinyll; bromobutadiene is also called bromoprene; chlorobutadiene is also called chloroprene; methylbutadiene is also called isoprene; and the combination of butadinene and two carboxyl groups is called muconic acid.

In short, compounds related to butadiene are cited for reference purposes, but these same compounds (e.g., muconic acid) are defining “butadiene” itself. Accordingly, this definition in *Hackh’s Chemical Dictionary*, by no means, states that bromoprene, chloroprene, isoprene, muconic acid, and the like are within the scope of the definition of “butadiene”.

Based on a common understanding in the art, the term “butadiene” refers to $\text{CH}_2=\text{CHCH}=\text{CH}_2$, which is non-substituted. This definition/common understand is further supported by various dictionaries including (1) “Kagaku Daijiten” (*Comprehensive Chemical Dictionary*) (Kyoritsu Shuppan Co., Ltd.), p. 817, (2) *WEBSTER’S New Collegiate Dictionary*, p. 150, and (3) *RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY*, p. 179. Applicants herein attach copies of these various dictionary definitions.

The first attached dictionary excerpt from “Kagaku Daijiten” defines “butadiene” as follows (though in the Japanese language, the English translation is provided below):

butadiene (butadiene in English; Butadien in German)

(1) referring to the chained hydrocarbons having two double bonds whose carbon number is four, consisting of the two isomers of 1,2-butadiene and 1,3-butadiene.

Since the latter isomer is much important industrially, butadiene often refers to 1,3-butadiene. Regarding 1,2-butadiene, the item for methylallene can be referenced.

Similar to the Kagaku Daijiten definition, the other two dictionaries (*Webster's*; *Random House*) also define “butadiene” as being “C₄H₆” (and not, e.g., “isoprene” having five carbons as asserted in the Office Action).

In addition, Applicants respectfully submit that the meaning of the term “butadiene” used in Fukui *et al.* ‘502 and EP ‘310 must be a non-substituted butadiene, since the description of Fukui *et al.* ‘502 and EP ‘310 would be ambiguous otherwise. For instance, butadiene is used in the preparation of SBR latex in paragraph [0361], page 33, of Fukui *et al.* ‘502. If the term “butadiene” actually included different types of compounds, the skilled artisan would not understand what compound is being described and used in the Examples of Fukui *et al.* ‘502.

For the reasons described above, Applicant respectfully submits that the Examiner's interpretation of the term “butadiene” is improper. Instead, the term “butadiene” refers to non-substituted CH₂=CHCH=CH₂, as even supported by the multiple attached dictionary definitions,

and the term “butadiene” does not refer to, e.g., isoprene.

The Instant § 102 Rejections Have Been Overcome

With regard to both rejections cited under § 102, Applicants respectfully submit neither Fukui *et al.* ‘502 or EP ‘310 discloses all instantly claimed features. In this regard, Applicants respectfully refer the Examiner to claim 1 as amended herein. Also, though the Examiner relies on the *Hackh’s* definition of “butadiene,” compounds like muconic acid and isoprene are cited for reference purposes and are not referring to the actual definition of “butadiene” as asserted in the outstanding Office Action. Thus, each of Fukui *et al.* ‘502 and EP ‘310 fails to disclose all features as presently claimed. Because “a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference,” each of the cited Fukui *et al.* ‘502 and EP ‘310 references cannot be a basis for a rejection under § 102. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). These rejections have been overcome.

In addition, as discussed above, if the term “butadiene” actually included different types of compounds, the skilled artisan would not understand what compound is being described and used in the Examples of Fukui *et al.* ‘502. In this regard, Applicants note: “The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention.” *See Elan Pharmaceuticals Inc. v. Mayo Foundation for Medical Education and Research*, 64 USPQ2d

1292, 1296 (Fed. Cir. 2002) (citing *Crown Operations International, Ltd. v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002)). There is no sufficient clarity and detail here if the skilled artisan cannot reproduce the examples in Fukui *et al.* '502.

Thus, based on the above, reconsideration and withdrawal of both anticipatory rejections are respectfully requested.

The Instant § 103(a) Rejections Have Been Overcome

With regard to the rejections cited under 103(a), these rejections have also been overcome. This is because U.S. case law squarely holds that a proper obviousness inquiry requires consideration of three factors: (1) the prior art reference (or references when combined) must teach or suggest all the claim limitations; (2) whether or not the prior art would have taught, motivated, or suggested to those of ordinary skill in the art that they should make the claimed invention (or practice the invention in case of a claimed method or process); and (3) whether the prior art establishes that in making the claimed invention (or practicing the invention in case of a claimed method or process), there would have been a reasonable expectation of success. *See In re Vaeck*, 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). Here, not even the initial requirement of disclosure of all claimed features has been satisfied. As explained above, neither Fukui *et al.* '502 nor EP '310 discloses "butadiene" as asserted in the Office Action and thus these references fail to describe all instantly claimed features.

Thus, the rejections under 35 U.S.C. § 103(a) have been overcome. Reconsideration and withdrawal of these rejections are respectfully requested.

Paragraph 5 of the Office Action and Unexpected Results for the Present Invention Rebutts the
§ 103(a) Rejections

Applicants note that in paragraph 5 (page 4, lines 7-8) of the outstanding Office Action, the Examiner states: “A *prima facie* case of obviousness may be made when chemical compounds have very close structural similarity and similar utilities.” *In re Payne*, *In re Papesch* and *In re Dillon* are also cited in the Office Action. Applicants respectfully submit these comments are inapplicable in view of the definition of “butadiene” as explained above. In other words, a *prima facie* case of obviousness has not been established since, e.g., the requisite disclosure of all claimed features has not been met.

Further, Applicants respectfully submit that the present invention has achieved unexpected results, whereby such results rebut any asserted *prima facie* case of obviousness (whether based on Fukui *et al.* ‘502, EP ‘310 or any other reference or combinations thereof). *In re Corkill*, 711 F.2d 1496, 226 USPQ 1005 (Fed. Cir. 1985); *see also In re Papesch*, 315 F.2d 381, 137 USP 43 (CCPA 1963); *In re Wiechert*, 370 F.2d 927, 152 USPQ 247 (CCPA 1967). As stated in M.P.E.P. § 2144.09 (see section entitled “*Prima Facie* Case Rebuttable By Evidence of Superior or Unexpected Results”), any rejection under 35 U.S.C. § 103(a) may be rebutted by a sufficient showing of unexpected results for the present invention.

Here, the copolymer used in the present invention provides remarkable improvement of image storability that is unexpected from the combinations of either Fukui *et al.* or EP ‘310 and *The Hackh’s Chemical Dictionary* (4th Ed.). Applicants’ position is supported by (1) the

experimental data generated from testing the Examples as described in the specification of the present application as well (2) in the Declaration (pursuant to 37 C.F.R. § 1.132) submitted on February 10, 2006 (which was in response to an Office Action of October 14, 2005) in U.S. Patent Application No. 10/722,553. This same Rule 132 Declaration is herein attached.

In the attached Rule 132 Declaration, the copolymers according to the presently claimed invention unexpectedly achieve at least 2 times better image storability than the copolymer disclosed in Fukui *et al.* '502. In particular, Applicants respectfully refer the Examiner to Table A at page 3 of the Declaration, which shows the inferior results of the three Comparative Examples (labeled as Sample Nos. 19-21) versus Inventive Sample Nos. 22-30 in, e.g., the "image storability ΔD_{\min} after storage" properties. Applicants also request the Examiner to review the captions below Table A in the Rule 132 Declaration that refer to the Fukui *et al.* '502 embodiments. Therefore, Applicants submit that the presently claimed invention has achieved results that are unexpected in the art.

Thus, these rejections under § 103(a) in view of either Fukui *et al.* '502 or EP '310 (and in further view of the *The Hackh's Chemical Dictionary* (4th Ed.) reference) have been overcome.

Summary

As described above, neither of the cited Fukui *et al.* '502 or EP '310 references, even in combination with *The Hackh's Chemical Dictionary* (4th Ed.), discloses, teaches or suggests all instantly claimed features of the present invention. Further, the requisite motivation is lacking in

view of the achieved unexpected results of the present invention. Accordingly, Applicants respectfully submit that all rejections have been overcome and request allowance of all pending claims.

Conclusion

A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present application. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact Eugene T. Perez (Reg. No. 48,501) at the offices of Birch, Stewart, Kolasch & Birch, LLP.

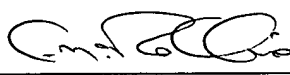
Application No. 10/724,706
Art Unit 1752
Supplemental Preliminary Amendment

Docket No.: 1982-0208P

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: APR 14 2006

Respectfully submitted,

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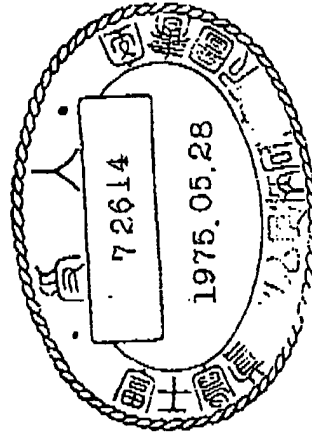
Attachments:

- Kagaku Daijiten" (*Comprehensive Chemical Dictionary*) (Kyoritsu Shuppan Co., Ltd.), p. 817-818 (total of 3 pages)
- WEBSTER'S New Collegiate Dictionary, p. 150 (total of 2 pages)
- RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY, p. 179 (total of 2 pages)
- Declaration under 37 C.F.R. § 1.132

Kagaku Daijiten

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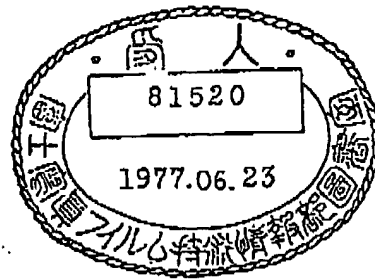
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Dictionary

often insolently, as a familiar term of address to a man or woman. Watch it, Buster! 4. a spree. 5. *BRONCOBUSTER*. [1825-35, Amer.]

bustle (bustl' /tʃ/), *n.* a woman's close-fitting, sleeveless, strapless dress with boning to give it shape, worn as a blouse. [1975-80; < *bustle* (bus'tl), *v.* -tled, -tling, *n.* -tled, -tling. See *bustle*, -tled.]

bustling (bus'tlɪŋ), *v.* -tled, -tling, *n.* -tled, -tling. *adv.* to move or act with a show of energy (often *fol. by about*): *bustling about in the office*. 2. to abound in something: *an office bustling with activity*.

bustle (bus'tl), *v.* -tled, -tling, *n.* -tled, -tling. 2. to cause to bustle; hustle. 3. to cause to bustle; hustle. 4. energetic and often noisy. [1615-25; ME *bustelen* to hurry along] —*bustler*, *n.* —*bustle*, *adv.*

bustle (bus'tl), *n.* a projecting pad or framework formerly worn under the back of a woman's skirt to support and display the drape of the fabric. [1780-90; orig. uncert.] —*bustled*, *adj.*

bustline (bus'tlaɪn), *n.* 1. the outline or shape of a woman's bust. 2. the part of a garment covering the breasts. [1935-40]

bus (bus), *n.* Computers. an arrangement of computers on a local-area network in which each computer is connected to a central node through which data is channeled.

bus (bus), *n.* Informal. 1. a separation or dissolution, as of a marriage; breakup. 2. a noisy party. 3. Brit. a quarrel. [1840-50]

bustle (bus'tl), *adj.*, *bustle-i-er*; *bustle-i-est*. (of a woman) having a large bust; bosomy. [1940-45] —*bustle-i-ness*, *n.*

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2. an island in the Firth of Clyde, in SW Scotland: part of the county Bute. 7733; 50 sq. mi. (130 sq. km).

bute (byoo'tē), *n.* BUTYLENE.

bute-o (byoo'tē ō), *n.*, pl. -te-ōs. any of various soaring hawks of the genus *Buteo*, of both the Old and New Worlds, having broad wings and a wide, rounded tail. [1905-10; < NL; *L. būteō* a kind of hawk or falcon] —*bute-o-nine* (-nīn', -nīn), *n.*

bute-ler (but'lar), *n.* the chief male servant of a household, usu. in charge of wines and liquors, the serving of meals, and the supervision of other servants. [1250-1300; ME *buteler* < AF *butillier*; see *butte*]

But-ler (but'lar), *n.* 1. Benjamin Franklin, 1818-93, U.S. politician and Union general in the Civil War. 2. Samuel, 1612-80, English poet. 3. Samuel, 1835-1902, English novelist and satirist.

but-ler's pan'try, *n.* a service room between a kitchen and dining room. [1810-20]

butte (but), *n.* 1. the end or extremity of anything, esp. the thicker, larger, or blunt end considered as a base, support, or handle: the butt of a rifle. 2. an end that is not used or consumed; remnant: a cigar butt. 3. a lean cut of pork shoulder. 4. Slang. the buttocks. 5. Slang. a cigarette. [1400-50; late ME *butt* (thick) end, buttock, OE *butt* tree stump (in place names); akin to Sw *but* stump; cf. *utrook*]

butte (but), *n.* 1. an object of wit, ridicule, etc. 2. a target. 3. (on a target range) a wall of earth or other backstop located behind the targets to stop bullets, arrows, etc. 4. butts, a target range. 5. Obs. the targets to stop bullets, arrows, etc. 6. to about. —*v.t.* 7. to position or fasten an end (of something). 8. to join the ends of (two things); set end to end. [1350-1400; ME < MF *but* target, goal, prob. < ON *bútr* butt, from the use of a wooden block or stump as a target in archery, etc.]

butte (but), *v.t.* 1. to strike or push with the head or horns. —*v.i.* 2. to strike or push something or at something with the head or horns.

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